

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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TMW ENTERPRISES, INC. et al.,

Plaintiffs,

v.

Case No. 07-CV-12230

FEDERAL INSURANCE COMPANY et al.,

Defendants.

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**ORDER STRIKING NOTICE OF VOLUNTARY DISMISSAL AND DENYING  
DEFENDANTS' MOTION TO DISMISS**

On March 13, 2008, Plaintiffs filed a "Notice of Voluntary Dismissal," purporting to voluntarily dismiss Defendants Continental Casualty Company, National Fire Insurance of Harford and Valley Forge Insurance Company from this matter. Plaintiffs state that they can dismiss the defendants under Federal Rule of Civil Procedure 41, which provides that "the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i).

It is true that a plaintiff can dismiss his action voluntarily, even after a motion to dismiss is filed, so long as a motion for summary judgment or answer is not first filed. *See Aamot v. Kassel*, 1 F.3d 441 (6th Cir.1993). Here, however, Plaintiffs seek to dismiss less than their entire action. Dismissal of some, but not all of an action or some but not all of the defendants, is governed by Federal Rule of Civil Procedure 15, not Rule 41. *See generally Mgmt. Investors v. United Mine Workers of Am.*, 610 F.2d 384, 394-95 (6th Cir. 1979); *Baker v. City of Detroit*, 217 F. App'x 491, 496 (6th Cir. 2007).

Rule 15 requires written consent or leave of court to amend a pleading after a responsive pleading has been filed. Fed. R. Civ. P. 15(a)(2). Because Defendants filed a motion to dismiss, Plaintiffs cannot amend their complaint without consent or leave of court. Plaintiffs' "Notice of Voluntary Dismissal," though presented as an understandable effort to simplify the litigation, is nonetheless procedurally improper, and the court will strike it from the docket.

Additionally, the court's staff has been informed, through counsel, that Defendants' February 19, 2008 motion to dismiss has been amicably resolved, yet no notice of withdrawal has been filed. On the strength of counsel's representation, the court will deny the motion. Accordingly,

IT IS ORDERED that Plaintiffs' "Notice of Voluntary Dismissal" [Dkt. # 44] is hereby STRICKEN from the docket of this court. If Plaintiffs still intend to seek dismissal of the three Defendants, they are DIRECTED to file either a stipulation of dismissal or the requisite Rule 15(a)(2) motion within **fourteen calendar days** of the date of this order.

IT IS FURTHER ORDERED that Defendants' "Motion to Dismiss" [Dkt. # 38] is DENIED WITHOUT PREJUDICE.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: March 21, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 21, 2008, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522